

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-13-047

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**FINAL AGENCY ORDER**

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IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF ROCKY MOUNTAIN HEALTH CARE OPTIONS, INC.

Respondent

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THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Rocky Mountain Health Care Options, Inc. ("Respondent"), pursuant to §§ 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S.

The Commissioner has fully considered and reviewed the Verified MCE Report ("Report") dated September 27, 2012, the Respondent's written submission or rebuttal received on October 29, 2012, and other relevant work papers, including the recommendations of staff.

The Report covers the examination period of January 1, 2009, through December 31, 2009.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a nonprofit hospital, medical-surgical, and health service corporation in the State of Colorado.
2. On September 13, 2012, in accordance with §§ 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S., the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.
3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.
4. The MCE was completed on September 13, 2012. Pursuant to § 10-1-205(2), C.R.S., the market conduct examiners prepared the Report, which the Examiner-in-Charge

timely filed with the Division, under oath, on September 27, 2012. The Report was subsequently timely transmitted to Respondent on September 27, 2012.

5. On September 27, 2012, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty (30) days, written submissions or rebuttals with respect to any matter contained in the Report.
6. Pursuant to § 10-1-205(1), C.R.S., the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
7. On October 29, 2012, Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.
8. The Commissioner has fully considered and reviewed the Report, Respondent's October 29, 2012, submission or rebuttal to the Report, and other relevant work papers, including the recommendations of staff.
9. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 10-1-204 and 10-1-205, C.R.S., as well as § 10-3-1106, C.R.S.

### **CONCLUSIONS OF LAW AND ORDER**

10. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as modified ("Modified Report"). The Commissioner has modified the Report as follows: Two (2) forms and related verbiage were removed from Issue E4, resulting in four (4) forms remaining. Twenty-nine (29) exceptions were removed from the over ninety (90) day category of Issue J1, resulting in ten (10) exceptions remaining. Twenty-one (21) exceptions were removed from the over ninety (90) day category of Issue J2, resulting in ten (10) exceptions remaining. Issue K1 was restated.
11. The Commissioner finds the Respondent operated in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.
12. The Commissioner considered the options available under § 10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner does not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to refile the Report pursuant to subsection (1) of § 10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to § 10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted or necessary for the resolution of any



inconsistencies, discrepancies, or disputed issues.

13. A copy of the Modified Report is attached to this Final Agency Order and is incorporated herein.
14. Issue A1: Failure to ensure that all forms certified and used by Rocky Mountain HCO during the examination period were in compliance with Colorado insurance law. This failure constitutes a violation of §§ 10-3-1104 and 10-16-107.2, C.R.S. Respondent was required to provide written evidence to the Division that it revised and put in use procedures to ensure that all contract forms certified are in compliance with Colorado insurance law. The Division's records indicate that Respondent has submitted procedures, which if fully implemented, appear to comply with the corrective actions required concerning this violation.
15. Issue E1: Failure of the Company's certificate of creditable coverage forms, in some instances, to include required information. (*This was a partial repeat of prior issue H2 in the findings of the market conduct examination report for 2004*). This failure constitutes a violation of § 10-16-118, C.R.S., and Colorado Insurance Regulation 4-2-18. The Respondent was required to provide written evidence to the Division that it has revised its certificate of creditable coverage form used for both individual and group plans to include the specific definition of "significant break in coverage", correct information regarding what constitutes a "significant break in coverage" and the correct look-back period as required by Colorado insurance law. Division records indicate the Respondent has corrected its forms to comply with recommendations in the Report.

In the market conduct examination for the period of January 1, 2004 through December 31, 2004, Rocky Mountain HCO was cited for failure to include all required information in its certificates of creditable coverage in compliance with Colorado insurance law. The violation resulted in Item #19 of Final Agency Order O-07-004 that indicated Respondent should revise its procedures to ensure that any required language, including that of a significant break in coverage, was included in all issued certificates of creditable coverage in compliance with Colorado insurance law. Having been previously ordered to revise its procedures in this regard, Respondent knew or should have reasonably known of its present violation of § 10-16-118, C.R.S., and Colorado Insurance Regulation 4-2-18, subjecting Respondent to a higher penalty pursuant to § 10-1-205(3)(d), C.R.S.

16. Issue E2: Failure of the Company's basic and standard health benefit plan forms, in some instances, to include the required "Family Planning Service" benefit for treatment and screening of sexually transmitted diseases within the schedule of health care services. This failure constitutes a violation of Colorado Emergency Regulation 08-E-12 and Colorado Insurance Regulation 4-6-5. The Respondent was required to provide written evidence to the Division that it has revised its contract forms to include the treatment and screening for sexually transmitted diseases as a family planning service benefit within the schedule of healthcare services, to ensure the contract forms are in



compliance with current Colorado insurance law. Division records indicate the Respondent has corrected its forms to comply with recommendations in the Report.

17. Issue E3: Failure of the Company's forms, in some instances, to include the mandatory coverage provisions related to a hospital stay for dependent newborn children following birth. This failure constitutes a violation of § 10-16-104, C.R.S. The Respondent was required to provide written evidence to the Division that it has revised its contract forms to include the mandatory coverage provisions related to coverage for a hospital stay for dependent newborn children required by current Colorado insurance law. Additionally, the Respondent was required to provide evidence that its individual contract forms and maternity services supplement forms, if used, clarify that coverage for a dependent newborn child will be provided according to current Colorado insurance law, even if the maternity services supplement is not added to the individual contract form. Division records indicate the Respondent has corrected its forms to comply with recommendations in the Report.
18. Issue E4: Failure of the Rocky Mountain HCO's forms, in some instances, to include all the required hospice care service benefits and provisions. This failure constitutes a violation of § 10-16-104, C.R.S., and Colorado Insurance Regulation 4-2-8. The Respondent was required to provide written evidence to the Division that it has revised its contract forms to state clearly and completely the criteria and the extent of coverage for the hospice care service benefits to comply with current Colorado insurance law. Additionally, Rocky Mountain HCO was required to provide evidence that its contract forms, and related coverage schedules, do not apply the minimum daily allowable amount related to routine home care services to all hospice care benefits. Division records indicate the Respondent has corrected its forms to comply with recommendations in the Report.
19. Issue G1: Failure to require applicants for individual coverage to complete the determination of self-employed business groups of one and to provide disclosure forms with required information to these applicants. This failure constitutes a violation of §§ 10-3-1104, 10-16-105.2 and 10-16-108.5, C.R.S., and Colorado Insurance Regulation 4-2-19. The Respondent was required to provide written evidence to the Division that it has revised its individual application process to include requiring completion of the Determination of Self-Employed Business Groups of One Form and, when applicable, the Disclosure Form for Self-Employed Business Groups of One Applying for Individual Health Benefit Plans to comply with current Colorado insurance law. The Division's records indicate that Respondent has submitted procedures, which if fully implemented, appear to comply with the corrective actions required concerning this violation.
20. Issue J1: Failure, in some instances, to pay, deny, or settle claims within the time periods required by Colorado insurance law. This failure constitutes a violation of § 10-16-106.5, C.R.S. The Respondent was required to provide written evidence to the Division that it has reviewed and modified its claims processing and quality controls to



ensure that all claims are adjudicated within the time periods required by Colorado insurance law. The Division's records indicate that Respondent has submitted procedures, which if fully implemented, appear to comply with the corrective actions required concerning this violation.

21. Issue J2: Failure, in some cases, to pay interest or penalty owed on claims not paid, denied or settled timely, as required by Colorado insurance law. This failure constitutes a violation of § 10-16-106.5, C.R.S. The Respondent was required to provide written evidence to the Division that it has initiated changes to its claims processing procedures to ensure that interest or penalty is paid when owed for all claims that are not paid, denied or settled within the time frames required by Colorado insurance law. The Division's records indicate that Respondent has submitted procedures, which if fully implemented, appear to comply with the corrective actions required concerning this violation.
22. Issue J3: Failure, in some cases, to comply with Colorado insurance law regarding written explanations of what additional information is needed to determine liability and adjudicate a claim. This failure constitutes a violation of § 10-16-106.5, C.R.S., and Colorado Insurance Regulation 4-2-24. The Respondent was required to provide written evidence to the Division that it has revised its claims procedures to ensure written requests for information are sent within thirty (30) days of receipt of a claim and the requests are in compliance with Colorado insurance law. The Division's records indicate that Respondent has submitted procedures, which if fully implemented, appear to comply with the corrective actions required concerning this violation.
23. Issue J4: Failure to adopt and implement reasonable standards for prompt investigation of claims including refusing to pay claims or retracting claims payments without conducting a reasonable investigation of all available information. This failure constitutes a violation of §§ 10-3-1104 and 10-16-106.5, C.R.S., and Colorado Insurance Regulations 4-2-24 and 4-6-2. The Respondent was required to provide written evidence to the Division that it has revised its claims procedures to require completion of a reasonable investigation to determine liability before denying a claim or retracting a claim payment. The Division's records indicate that Respondent has submitted procedures, which if fully implemented, appear to comply with the corrective actions required concerning this violation.
24. Issue J5: Failure to correctly count the number of days to pay or deny claims and determine whether the claim was adjudicated late and/or interest was owed. This failure constitutes a violation of § 10-16-106.5, C.R.S. The Respondent was required to provide written evidence to the Division that it has revised its systems and procedures to ensure that the number of days to adjudicate claims and the amount of interest or penalty owed in the case of a late payment is calculated correctly as required by Colorado insurance law. The Division's records indicate that Respondent has submitted procedures, which if fully implemented, appear to comply with the



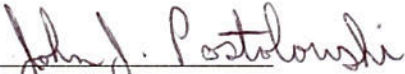
corrective actions required concerning this violation.

25. Issue K1: Failure to include the qualifying credentials of the physician or clinical peer who evaluated the appeal in the written notification of the decision. This failure constitutes a violation of § 10-16-113, C.R.S., and Colorado Insurance Regulation 4-2-17. The Respondent was required to provide written evidence to the Division that it has revised its first-level appeal notification letters to include the qualifying credentials of the physician and clinical peer(s) as required by Colorado insurance law. Division records indicate the Respondent has modified its letters to comply with recommendations in the Report.
26. The issues and violations described in paragraphs 14 through 25 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Commissioner hereby orders a civil penalty in the amount of eighty-six thousand and no/100 dollars (\$86,000.00) for the cited violations of Colorado law. However, the Commissioner hereby stays \$29,000.00 of the \$86,000.00 civil penalty based upon documentation of corrective actions initiated by the Respondent prior to issuance of this Final Agency Order, which appear to correct the cited violations of Colorado law. The stayed portion of the civil penalty shall become due and payable if the Division subsequently determines that the Respondent is not in substantial compliance with all corrective actions included in this Final Agency Order. The remaining \$57,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount pursuant to 24-34-108, C.R.S. Thus, the surcharge assessed is \$5,700.00. The total balance due, including the surcharge, is sixty-two thousand seven hundred and no/100 dollars (\$62,700.00). The surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program. The penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order.
27. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Modified Report and this Final Agency Order, dated November 27, 2012.
28. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law. Copies of the Modified Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.
29. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in

and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.

30. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

**WHEREFORE:** The Report dated September 27, 2012, subsequently adopted by the Commissioner with modifications on November 27, 2012, along with the findings of fact and conclusions of law contained within this Final Agency Order incorporating the adopted Modified Report are hereby approved and effective this 27<sup>th</sup> day of November, 2012, and filed and made an official record of this office.

  
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Jim Riesberg

Commissioner of Insurance

By John J. Postolowski

Deputy Commissioner of Finance and Administration

**CERTIFICATE OF MAILING**

I hereby certify that on the 27<sup>th</sup> day of November, 2012, I caused to be deposited the **FINAL AGENCY ORDER NO. O-13-047 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF ROCKY MOUNTAIN HEALTH CARE OPTIONS, INC.**, in the United States Mail via certified mailing with postage affixed and addressed to:

Rocky Mountain Health Care Options, Inc.  
PO Box 10600  
Grand Junction, CO 81506



Eleanor Coe  
Market Regulation Administrator  
Division of Insurance